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DIVISION II
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STATE OF WASHINGTON
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No. 48744-6-II

Court of Appeals, Div. II of the State of Washington

Steve Berschauer,
Appellant,

v.

State of Washington, Department of Enterprise Services, et al,
Respondents.

(SUBSTITUTE) BRIEF OF RESPONDENT CITY OF
OLYMPIA

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USPS next day 10/17

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I. Introduction.

The City of Olympia's involvement in the facts of this case was solely as the agency which received, processed and approved the State of Washington's application for a Boundary Line Adjustment (BLA) in 2011. The City's interest is in having BLAs accorded finality in conformity with the policy of law which favors conclusiveness in land use decisions. Without finality in the highly-regulated area of land development, land owners' confidence in the ability to use their land for productive purposes will be unduly diminished.

After Steve Berschauer filed this action on December 4, 2015, the City answered, and moved for dismissal on January 15, 2016, pursuant to CR 12(b)(6), and, alternatively, CR 12(c). Although Mr. Berschauer submitted evidentiary documents in response to the City's motion, the trial court declined to consider the motion under CR 56, and granted the motion as requested. CP 61.

A court's dismissal of a request for declaratory relief is, unlike typical motions to dismiss or for summary judgment, reviewed for abuse of discretion. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971); *Grandmaster Shen-Yen Lu v. King County*, 110 Wn.App. 92, at 99, 38 P.3d 1040 (2002); *Wash. Fed. of State Employees v. State*, 107 Wn.App. 241, 244, 26 P.3d 1003 (2001) (quoting *Nollette v. Christianson*, 115 Wn.2d 594, 599, 800 P.2d 359 (1990)). A trial court abuses its discretion only when its decision is manifestly unreasonable or based on untenable grounds. *Nollette v. Christianson*, 115 Wn.2d at 599.

II. Statement of the Issues.

A. Did the trial court err in dismissing the Complaint on the basis of the LUPA statute of limitations?

B. Does the appellant have an adequate remedy which precludes this declaratory judgment action?

III. Statement of the Case.

The City of Olympia accepts parts 3.2 and 3.3 of the Appellant's Statement of the Case, with the addition that Mr. Berschauer's claim of ownership of a strip of land by adverse possession was not a recorded interest which could have provided notice to the City in 2011 of Berschauer's later claim and adjudication of the claim. In fact, in part 5.2, p. 10, of the Brief of Appellant, Berschauer asserts that he himself did not "become aware" that he had a challenge to the BLA based on his unrecorded interest "until [the] Thurston County Superior Court issued a summary judgment order on November 20, 2015, confirming that Berschauer owned the south half of the vacated street by adverse possession." Because part 3.1 of the Appellant's Statement of the Case is irrelevant to this action and the City had no notice of the Appellant's claim to ownership by adverse possession, the City rejects part 3.1.

Mr. Berschauer's Complaint admits that City of Olympia BLA 11-0135 was granted to the State of Washington in 2011.

CP 6. As of the commencement of this action on December 5, 2015, more than 21 days had elapsed since any date in 2011.

IV. Argument.

Mr. Berschauer's Complaint for Declaratory Relief sought judgment declaring that City of Olympia BLA 11-0135 was "void ab initio" and should be rescinded. CP 7. But Berschauer's challenge violated a jurisdictional statute of limitations requirement, and he possesses an adequate remedy at law. Each of these defects precludes this action.

A BLA is a species of land use approval which allows the movement of legal lot lines but does not create additional lots or grant development approval. State statutes recognize BLAs as exceptions to the platting statutes, and leave their regulation to local jurisdictions. RCW 58.17.040(6); *Island County v. Dillingham Development Co.*, 99 Wn.2d 215, 223, 662 P.2d 32 (1983).

Municipalities are not required to perform inspections of land which is the subject of a BLA application, and they are not

required to hold hearings or provide notice to neighboring property owners in order to process and approve a BLA. BLAs are categorically exempt from the requirements of the State Environmental Policy Act, ch. 43.21C RCW. RCW 43.21C.110(1)(a) and WAC 197-11-800(6)(f). If a property owner submits a BLA application and complies with legal requirements, a BLA must be granted. *Cox v. City of Lynnwood*, 72 Wn.App.1, 7, 863 P.2d 578 (1993).

The City of Olympia's regulations over BLAs are minimal. CP 14 and 15 contain the sum total of those regulations, found in chapter 17.30 of the Olympia Municipal Code (OMC). No notice to neighboring property owners is necessary and no hearings are conducted to review a BLA application. The City is not obligated to inspect the property affected or to make inquiry into possible ownership interests such as unadjudicated claims based upon adverse possession.

A. Violation of the Statute of Limitations Precludes this Action.

Boundary line adjustments are land use decisions, subject to the procedural provisions of the Land Use Petition Act (LUPA), ch. 36.70C RCW. *Chelan Cty. v. Nykreim*, 146 Wn.2d 904, 926-27, 52 P.3d 1 (2002), *accord, James v. Cty. of Kitsap*, 154 Wn.2d 574, 584, 115 P.3d 286 (2005). Among the provisions of LUPA is RCW 36.70C.040, establishing a 21-day statute of limitations for challenges to land use decisions.

RCW 36.70C.040(2) provides that “[a] land use petition is barred, and the court may not grant review, unless the petition is timely filed with the court and timely served.” This means that the limitation is a jurisdictional requirement which, when violated, mandates dismissal of an action challenging a land use decision. *Keep Watson Cutoff Rural v. Kittitas County*, 145 Wn.App. 31, 37-38, 184 P.3d 1278 (2008), *review denied*, 165 Wn.2d 1013, 199 P.3d 410 (2009) (*citing Witt v. Port of Olympia*, 126 Wn.App. 752, 756, 109 P.3d 489 (2005);

Overhulse Neighborhood Ass'n v. Thurston County, 94 Wn.App. 593, 597, 972 P.2d 470 (1999); and *San Juan Fidalgo Holding Co. v. Skagit County*, 87 Wn.App. 703, 943 P.2d 341 (1997)).

LUPA's "statute of limitations begins to run on the date a land use decision is issued," *Habitat Watch v. Skagit County*, 155 Wn.2d 397, at 408, 120 P.3d 56 (2005), and "even illegal decisions must be challenged in a timely, appropriate manner." *Habitat Watch*, 155 Wn.2d at 407. The statute of limitations applies even if a challenger lacks notice of the land use decision. *Habitat Watch*, 155 Wn.2d at 400-01; *accord, Asche v. Bloomquist*, 132 Wn.App. 784, at 798-99, 133 P.3d 475 (2006).

A principle that guides Washington courts in determining whether challenges to land use decisions are permissible is that land owners should be afforded certainty in government decisions concerning development of their property. An associated principle is that decisions are final unless they are

directly and timely appealed. *Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wn.2d 169, 4 P.3d 123 (2000); *Skamania County v. Columbia River Gorge Comm'n*, 144 Wn.2d 30, 26 P.3d 241 (2001); *Chelan County v. Nykreim*, 146 Wn.2d 904, 52 P.3d 1 (2002); *Samuel's Furniture, Inc. v. Dep't of Ecology*, 147 Wn.2d 440, 54 P.3d 1194 (2002).

Different forms of collateral attack on a non-appealed land use decision are impermissible. *Durland v. San Juan County*, 174 Wn.App. 1, 13-14, 298 P.3d 757 (2012). This is so because a land use decision that is not timely appealed becomes unassailably valid. *Id.*, citing *Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wn.2d 169 at 181, n. 2, 4 P.3d 123 (2000) (writ of certiorari is an impermissible collateral attack on a land use decision).

This action was untimely under LUPA. The action was commenced on December 4, 2015, and Mr. Berschauer's Complaint (CP 6) states that the City entered the BLA decision "in late 2011." The action further represents a disallowed

collateral attack on a final and valid land use decision. The trial court properly granted the City of Olympia's motion to dismiss, and that decision should be affirmed.

B. Berschauer's Three Arguments Against the Time Bar of the LUPA Statute of Limitations Lack Merit.

1. The City's BLA Decision is not "Void" and in any Event the LUPA Statute of Limitations Applies to "Void" LUPA Decisions.

Mr. Berschauer relies principally on an argument that the statute of limitations does not apply to the City's 2011 BLA decision because that decision was void *ab initio*, and not merely voidable.¹ He argues that the BLA was void because OMC 17.30.030(5) requires that the BLA map include signatures of all parties holding an interest in the lots being

¹ Generally, the legal difference between an act that is "voidable" or "void" is that the statute of limitations applies to the voidable act but not to the void act. *See Bilanko v. Barclay Court Owners Ass'n*, 185 Wn.2d 443, 450-52 (2016). However, as discussed below, that difference does not apply under LUPA, where the statute of limitations applies to acts that are void as well as voidable.

adjusted and Mr. Berschauer who held an unrecorded interest in one lot did not sign.

The law is clear that an act by a person or governmental entity that fails to comply with a statutory requirement in circumstances like those here is only voidable and not void ab initio. For example, in *Bilanko v. Barclay Court Owners Ass'n*, 185 Wn.2d 443, 450-52 (2016), the Court ruled that the alleged failure of a condominium owners association to comply with a statute requiring a certain percentage of the vote to amend a condominium declaration was only "voidable" and not "void ab initio." The Court indicated that absent a showing of fraud or serious offense to public policy, the failure to comply with a legal requirement is only voidable unless the law in question expressly declares that the failure voids the act. 185 Wn.2d at 451. Here there is no allegation of fraud on the part of the City or serious offense to public policy, and the Olympia Municipal Code does not expressly void BLA decisions that are ultimately found not to comply with all of the criteria.

Similarly, in *S. Tacoma Way, LLC v. State*, 169 Wn.2d 118, 129, 233 P.3d 871 (2010), the Court rejected the argument that the Washington Department of Transportation's sale of a parcel was void because the Department acted *ultra vires* in failing to give a statutory notice to abutting landowners to allow them to bid on the property before it sold. The Court reaffirmed its prior holding that "[a]n act of an officer which is within his realm of power, albeit imprudent or violative of a statutory directive, is not *ultra vires*." 169 Wn.2d at 122-23.

Mr. Berschauer makes no argument that the City was not authorized to accept an application for a BLA and rely on its facial representations of ownership to approve such an application. Nor would such an argument have any validity because BLAs are recognized in State law (RCW 58.17.040(6)), and obviously are the subject of local legislation in the Olympia Municipal Code. CP 14-15.

Moreover, even if the BLA decision were void, LUPA case law holds that when the allegedly void action is a land use

decision, it must be challenged within the statute of limitations under LUPA or it will be deemed valid. *Nykreim*, 146 Wn.2d at 925 (quoting *Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wn.2d 169, 180-82, 4 P.3d 123 (2000)). "[E]ven illegal decisions must be challenged in a timely, appropriate manner." *Habitat Watch v. Skagit County*, 155 Wn.2d 397, at 407-08, 120 P.3d 56 (2005). The statute of limitations applies even if a challenger lacks notice of the land use decision. *Habitat Watch*, 155 Wn.2d at 400-01, accord, *Asche v. Bloomquist*, 132 Wn.App. 784, at 798-99, 133 P.3d 475 (2006).

Mr. Berschauer argues (Brief at 11) that the statements in *Habitat Watch* applying the LUPA statute of limitation to "void" acts (155 Wn.2d at 407-08) were implicitly overruled by *Bilanko* and *S. Tacoma Way*. However, no basis exists for inferring that *Bilanko* or *S. Tacoma Way* overruled the LUPA ruling in *Habitat Watch*, as neither case involved LUPA or even discussed *Habitat Watch*. Berschauer also argues that those statements in *Habitat Watch* were only dicta. *Id.* However,

the Court in *Habitat Watch* was clear that its ruling applied to permit decisions "within LUPA - even where the decision is allegedly void." 115 Wn.2d at 408. In *Habitat Watch*, the facts supported an alleged inference of serious offense to public policy because the County extended a permit twice without holding statutorily required public hearings or giving statutorily required notice to all parties of record. *Id.*

2. Berschauer's Argument that the Statute of Limitation Never Began to Run Lacks Merit.

Mr. Berschauer argues that the LUPA statute of limitations never began to to run because the City's BLA was never final since the State failed to satisfy the requirement of OMC §17.30.030(5), of a map signed by Berschauer. Appellant Brief at 10. For this argument, Berschauer relies on OMC 17.30.040, which provides as follows:

Approval of the boundary line adjustment shall not be final until:

1. There is compliance with the requirements above;
2. The county treasurer has certified that all taxes on the land have been fully paid and discharged; and

3. A final map including any record of survey has been approved by the Department and filed for record with Thurston County Auditor.

Under Mr. Berschauer's reading of Section .040(1), no decision of the City on a BLA would ever be final if at any time in the future a person could have the BLA declared invalid because one of the seven requirements for a BLA in OMC 17.30.030 had not been met. His reading leads to clearly absurd consequences in that a BLA that people have relied upon to make land conveyances for decades would be open to attack without any time bar. That would undermine the desired goal of reasonable certainty for land use determinations that is the bedrock of LUPA.

Further, Berschauer's reading of Section .040(1) is contrary to the City's reasonable interpretation of the provision, which is that "compliance with the requirements above" means that the City was reasonably satisfied that those requirements had been met as evidenced by its approval of the BLA. Since the City is the entity with expertise in land use regulation and

has historically applied .040 in this manner, its interpretation, unlike Berschauer's absurd interpretation, should be given deference. *Citizens For A Safe Neighborhood v. City of Seattle*, 67 Wn.App. 436, 440, 836 P.2d 235 (1992) “It is a well established rule of statutory construction that considerable judicial deference should be given to the construction of an ordinance by those officials charged with its enforcement.”) (quoting *Keller v. Bellingham*, 92 Wn.2d 726, 731, 600 P.2d 1276 (1979)).

3. Berschauer's Argument that He Commenced His Appeal Within the 21 days of the LUPA Statute of Limitations Is Without Merit.

As his third and final argument, Mr. Berschauer argues in the alternative that he met the LUPA 21 day statute of limitations because on December 4, 2015, he filed his superior court challenge to the BLA within 21 days of the date that the City's BLA decision was issued, which he alleges was November 20, 2015. Brief of Appellant at 10. He argues that the date the BLA decision was issued should be considered to

be November 20, 2015, because that is the date he first "became aware" he had a BLA challenge, since on that day the Thurston County Superior Court issued an interlocutory ruling that he owned the south half of the vacated right of way by adverse possession. Brief of Appellant at 10.

The date a decision is issued under LUPA is defined at RCW 36.70C.040(2)-(4). *See Habitat Watch*, 155 Wn.2d at 408. A land use decision is considered issued on the third day after it is mailed, or on the date that the local jurisdiction provides that notice is publically available. *Id.* If neither of those dates apply, the decision is considered issued on the date it is entered into the public record. *Id.* Here the record does not disclose a date of mailing. OMC 17.30.040(3) arguably provides for public notice by requiring recording, and in any event, the date of recording would be a date that the decision was "entered into the public record." The BLA was recorded

by the County Auditor on December 21, 2011.² Since Mr. Berschauer's suit was filed on December 4, 2015, it clearly was more than 21 days after the decision was issued.

B. Alternative Remedies Exist, Precluding Declaratory Relief.

Declaratory relief is not available when there is an adequate alternative remedy. *Grandmaster Shen-Yen Lu v. King County*, 110 Wn.App. 92, 98-99, 38 P.3d 1040 (2002). The party seeking declaratory relief must show the absence of an adequate alternative remedy. *Nakata v. Blue Bird, Inc.*, 146 Wn.App. 267, 279, 191 P.3d 900 (2008). Although declaratory relief is available if a court determines that other available remedies are unsatisfactory, this exceptional relief is rare.

² The recorded BLA is contained at CP 50-52. Because it is difficult if not impossible to read the date of recording on those pages, we have attached a readable copy as the Appendix to this brief. "Documents whose contents are alleged in a complaint but which are not physically attached to the pleading may ... be considered in ruling on a CR 12(b)(6) motion to dismiss." *Trujillo v. Nw. Tr. Services, Inc.*, 183 Wn.2d 820, 827, n. 2, 355 P.3d 1100 (2015). Further, where the "basic operative facts are undisputed and the core issue is one of law," the motion to dismiss need not be treated as a motion for summary judgment. *Id.*

Sheng-Yen Lu, 110 Wn.App. at 106. Loss of an adequate remedy due to a party's failure to diligently pursue it does not allow the party to bring an action for declaratory relief.

Evergreen Wash. Healthcare Frontier LLC v. Dep't of Social & Health Servs., 171 Wn.App. 431, 452-53, 287 P.3d 40 (2012), *review denied*, 176 Wn.2d 1028 (2013).

Mr. Berschauer does have an adequate alternative remedy. Once his ownership by adverse possession is finally determined in the separate action under Thurston County Superior Court Cause No. 13–2-02519-9 (Court of Appeals No. 49414-I-II),³ he can apply for a boundary line adjustment to reform the line between his property and the BLA-derived Parcel No. 4, where his claimed property interest lies.

This declaratory judgment action is not supported by evidence that no adequate alternative remedy exists, and, in

³ This action is arguably premature because Mr. Berschauer's adverse possession claim is not yet fully adjudicated (see Court of Appeals No. 49414-I-II).

fact, such a remedy does exist. For this additional reason, the superior court's order dismissing this action should be affirmed.

V. Conclusion.

For the reasons given above, the Court of Appeals should affirm the decision dismissing Mr. Berschauer's Complaint for Declaratory Relief; and, if the City prevails on appeal, should award attorneys' fees and costs pursuant to RCW 4.84.370, on the basis that the City prevailed before the superior court and is considered a prevailing party because its decision will have been upheld at the superior court and on appeal.

RESPECTFULLY SUBMITTED this 7th day of October, 2016.

LAW, LYMAN, DANIEL,
KAMERRER & BOGDANOVICH, P.S.

A handwritten signature in blue ink, appearing to read "W Dale Kamerrer", is written over a horizontal line.

W. Dale Kamerrer, WSBA #8218
Attorneys for Defendant City of Olympia

OFFICE OF THE OLYMPIA CITY ATTORNEY

A handwritten signature in blue ink, appearing to read "W Dale Kamerrer for", is written over a horizontal line.

Mark Barber, WSBA #8379
City Attorney for City of Olympia

Appendix

BLAM 4243334 2/3

RECORD OF SURVEY - BOUNDARY LINE ADJUSTMENT NO. 11-0135-OL

CITY OF OLYMPIA
BOUNDARY LINE ADJUSTMENT
NUMBER: 11-0135-OL
SWAN BLDG NO. 141 OFFICE BLDG NO. 36
SW QUARTER OF THE NE 1/4 CORNER OF SECTION 23, TOWNSHIP
18 NORTH, RANGE 2 WEST, W.M.
THE CITY OF OLYMPIA, THURSTON COUNTY, WASHINGTON

DECLARATION OF BOUNDARY LINE ADJUSTMENT

KNOW ALL MEN BY THESE PRESENTS:
THAT WE, THE UNDERSIGNED, ARE THE OWNERS OF THE REAL PROPERTY DESCRIBED BY THE DECLARATION;
AND ARE SEEKING APPROVAL BY THE CITY OF OLYMPIA COMMUNITY PLANNING AND DEVELOPMENT OF THE
PRESENT DESCRIBED ADJUSTMENT OF LAND KNOWN AS BOUNDARY LINE ADJUSTMENT NUMBER 11-0135-OL
1. WE, THE UNDERSIGNED, HEREBY DEFEND, UPHOLD, AND HOLD HARMLESS THE CITY OF OLYMPIA, ITS
OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL COSTS OR DAMAGES, INCLUDING, BUT NOT LIMITED
TO, ATTORNEY'S FEES INCURRED AS A RESULT OF THIS SIGNATURE, THE OWNER OF THE
PROPERTY BEING ADJUSTED. SUCH COSTS AND DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, LITIGATION,
VOLUNTARY QUIET TITLE, BOUNDARY DISPUTES, LOSS OF USE OF ALL OR A PORTION OF REAL PROPERTY
AND SLANDER OF TITLE.
2. WE, THE UNDERSIGNED, HEREBY ACKNOWLEDGE THAT THIS BOUNDARY LINE ADJUSTMENT HAS BEEN MADE
WITH OUR FREE CONSENT AND IN ACCORDANCE WITH OUR DESIRES.
3. THE ATTACHED BOUNDARY LINE ADJUSTMENT MAP (PAGE THREE) AND LEGAL DESCRIPTIONS OF PARCELS
(PAGE ONE) ARE MADE PART OF THIS DECLARATION.

[Signature]
GRANTOR
[Signature]
TITLE/AUTHORITY
DATE: 11/21/11

GRANTOR
TITLE/AUTHORITY
DATE
GRANTOR
TITLE/AUTHORITY
DATE

STATE OF WASHINGTON)
COUNTY OF THURSTON)
I CERTIFY THAT I KNOW OR HAVE SATISFACTORY EVIDENCE THAT
Joyce Garabetti Treasurer IS THE PERSON WHO APPEARED
BEFORE ME, AND SAID PERSON ACKNOWLEDGED THAT (HE/SHE) SIGNED THIS INSTRUMENT, ON OATH
STATED THAT (HE/SHE) WAS AUTHORIZED TO EXECUTE THE INSTRUMENT AND ACKNOWLEDGED IT AS
THE DIRECTOR
OF DEPARTMENT OF ENTERPRISE SERVICES
TO BE THE FREE AND VOLUNTARY ACT OF SUCH PARTY FOR THE USES AND PURPOSES MENTIONED
IN THE INSTRUMENT.
DATED 11/21/2011 SIGNATURE [Signature]

[Signature]
NOTARY PUBLIC IN AND FOR THE STATE OF
WASHINGTON RESIDING AT 2144 1/2
MY APPOINTMENT EXPIRES 11-2-11



PARCEL INFORMATION

PARCEL	ADDRESS
LOT 1	519 14TH AVENUE SE
LOT 2	BUILDING ADDRESS REMAIN AS
	1500 JEFFERSON STREET SE
	532 16TH AVENUE SE
LOT 3	600 16TH AVENUE SE
LOT 4	624 16TH AVENUE SE
	620 10TH AVENUE SE

ALL LOTS ARE:
CITY OF OLYMPIA
STATE OF WASHINGTON
Zip Code of 98501

I CERTIFY THAT I KNOW OR HAVE SATISFACTORY EVIDENCE THAT
[Signature] IS THE PERSON WHO APPEARED
BEFORE ME, AND SAID PERSON ACKNOWLEDGED THAT (HE/SHE) SIGNED THIS INSTRUMENT, ON OATH
STATED THAT (HE/SHE) WAS AUTHORIZED TO EXECUTE THE INSTRUMENT AND ACKNOWLEDGED IT AS
THE [Signature]
OF [Signature]
TO BE THE FREE AND VOLUNTARY ACT OF SUCH PARTY FOR THE USES AND PURPOSES MENTIONED
IN THE INSTRUMENT.

DATED [Signature] SIGNATURE
NOTARY PUBLIC IN AND FOR THE STATE OF
WASHINGTON RESIDING AT [Signature]
MY APPOINTMENT EXPIRES [Signature]

STATE OF WASHINGTON)
COUNTY OF THURSTON)
I CERTIFY THAT I KNOW OR HAVE SATISFACTORY EVIDENCE THAT
[Signature] IS THE PERSON WHO APPEARED
BEFORE ME, AND SAID PERSON ACKNOWLEDGED THAT (HE/SHE) SIGNED THIS INSTRUMENT, ON OATH
STATED THAT (HE/SHE) WAS AUTHORIZED TO EXECUTE THE INSTRUMENT AND ACKNOWLEDGED IT AS
THE [Signature]
OF [Signature]
TO BE THE FREE AND VOLUNTARY ACT OF SUCH PARTY FOR THE USES AND PURPOSES MENTIONED
IN THE INSTRUMENT.

DATED [Signature] SIGNATURE
NOTARY PUBLIC IN AND FOR THE STATE OF
WASHINGTON RESIDING AT [Signature]
MY APPOINTMENT EXPIRES [Signature]



Parametrix

WASHINGTON STATE SURVEYING
1000 1ST AVENUE, SUITE 100
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STATE OF WASHINGTON

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No. 48744-6-II

Court of Appeals, Div. II, of the State of Washington

Steve Berschauer,

Appellant,

v.

State of Washington, Department of Enterprise Services, et al.

Respondents

Certificate of Service

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I declare under penalty of perjury under the laws of the State of Washington that on the date specified below, I served upon counsel a copy of the following documents via U.S. Mail, postage pre-paid as follows:

1. (Substitute) Brief of Respondent City of Olympia;
2. Certificate of Service.

to the following:

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Dated this 7th day of October 2016 at Tumwater, Washington.

Marry Marze
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